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March 19, 2020

Via ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Notice of Oral Ex Parte Communications

PS Docket No. 19-254, *Petitions Filed by the Boulder Regional Emergency Telephone Service Authority*

Dear Ms. Dortch:

On March 17, 2020, Jeffrey Neal and Paul Bongaarts of T-Mobile USA, Inc. (“T-Mobile”),^{1/} Joe Hanna of Directions, Russell Fox of Mintz, and I met by telephone with David Furth, Erika Olsen, Michael Wilhelm, Brian Marengo, Roberto Mussenden, Alex Espinoza, and John Evanoff of the Public Safety and Homeland Security Bureau to discuss the above-referenced proceeding.^{2/}

During the meeting, and consistent with T-Mobile’s comments in this proceeding,^{3/} we urged the Commission to grant the BRETSA Petitions and issue a declaratory ruling stating that interoperability is a fundamental responsibility of the First Responder Network Authority (“FirstNet”) in operating the National Public Safety Broadband Network (“NPSBN”) and should be supported at all levels, including network, services, applications and devices. In addition, we urged the Commission to issue a Notice of Proposed Rulemaking to seek comment on interoperability issues, such as network elements and policies or services that are critical for interoperability, to facilitate roaming and appropriate prioritization treatment for public safety

^{1/} T-Mobile USA, Inc. is a wholly owned subsidiary of T-Mobile US, Inc., a publicly-traded company.

^{2/} See Boulder Regional Emergency Telephone Service Authority Petition for Reconsideration, or in the Alternative, Petition for Declaratory Ruling and Petition for Rulemaking, PS Docket No. 16-269, PS Docket No. 12-94, PS Docket 06-229, WT Docket No. 06-150 (filed Nov. 21, 2018) (“BRETSA Petitions”).

^{3/} See Reply Comments of T-Mobile USA, Inc., PS Docket No. 19-254 (filed Oct. 11, 2019) (“T-Mobile Reply Comments”).

entities. Finally, we urged the Commission to require that FirstNet enter into bilateral roaming agreements with commercial carriers to ensure that public safety users, regardless of their primary carrier, are able to communicate with one another during times of emergency or disaster.

We explained that, contrary to the assertions of AT&T and FirstNet, taking these actions, which are supported by the record, would further Congress' primary objective of ensuring that first responders are able to communicate with one another under any circumstances, mitigating threats and saving lives. Attempts to suggest otherwise would harm not only public safety entities, but also the communities they are sworn to protect. Finally, we demonstrated that the Commission has ample authority to grant the BRETSA Petitions and should do so expeditiously.

Grant of the BRETSA Petitions is Consistent with the Intent of Congress and Others.

AT&T and FirstNet^{4/} have urged the Commission to dismiss the BRETSA Petitions because they claim that the NPSBN is already “interoperable” as required by the Spectrum Act.^{5/} They suggest that interoperability should be defined as requiring only the ability of FirstNet subscribers to communicate with each other. AT&T and FirstNet, however, take an unnecessarily narrow view of the Spectrum Act's requirements and Congressional intent.

In creating FirstNet to operate the NPSBN, Congress mandated that the NPSBN be built to “open, non-proprietary, commercially available standards” and provide connectivity between the radio access network and the public Internet or the public switched network, or both.^{6/} To ensure a nationwide level of interoperability for the NPSBN, Congress also established within the Commission the Technical Advisory Board for First Responder Interoperability (“TABFR”) to provide recommendations on minimum technical requirements for the NPSBN.^{7/} The purpose of those requirements is to ensure that true nationwide interoperability is achieved on the NPSBN so that a variety of public safety entities can communicate with one another regardless of jurisdiction and whether they use FirstNet. Indeed, Congress would not have specifically called for open standards and created the TABFR if it sought only to achieve operability across a single network of FirstNet subscribers.

Recent legislation demonstrates the importance that Congress attaches to interoperable networks. For example, Senators Warner, Hawley, and Blumenthal have introduced the “Augmenting

^{4/} See Comments of AT&T Services, Inc. PS Docket No. 19-254 (filed Sept. 26, 2019) (“AT&T Comments”); Reply Comments of AT&T Services, Inc. PS Docket No. 19-254 (filed Oct. 11, 2019); Letter from Kevin Green, Counsel, First Responder Network Authority, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 19-254 (filed Oct. 28, 2019); Letter from Brian Benison, Director, Federal Regulatory Affairs, AT&T, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 19-254 (filed Jan. 24, 2020); Letter from Joseph P. Marx, Assistant Vice President Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 19-254 (filed Jan. 28, 2020); Letter from Joseph P. Marx, Assistant Vice President Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 19-254 (filed Jan. 31, 2020).

^{5/} See Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112-96, 126 Stat. 156, (2012) (“Spectrum Act”).

^{6/} See *id.* §§ 6202, 6206.

^{7/} See *id.* § 6203.

Compatibility and Competition by Enabling Service Switching Act of 2019” (or “ACCESS Act of 2019”), which would direct large communications platform providers “to facilitate and maintain technically compatible, interoperable communications with a user of a competing communications provider.”^{8/} In addition, as T-Mobile explained,^{9/} both the TABFR and FEMA’s 2018-2020 Strategic Plan have confirmed that full interoperability and redundancy are critical to public safety. For example, TABFR and FEMA have noted the importance of reliable, coordinated responses among public safety entities in order to protect and serve all communities and citizens. For the Commission to find that interoperability is only required among FirstNet subscribers on the NPSBN, as AT&T and FirstNet assert, would be to suggest that Congress designated billions of dollars and 20 megahertz of 700 MHz spectrum to create a closed network from which only a select group of subscribers would benefit. Such an interpretation would contradict clear Congressional intent and do less than possible to address the problems that Congress intended to solve when it created FirstNet and the NPSBN.

The Record Demonstrates Wide Support for Grant of the BRETSA Petitions to Ensure Public Safety Entities Have Sufficient Choice in Providing Critical Services.

Commenters in this proceeding, including many public safety respondents, broadly agree that the Commission must ensure that public safety entities that use other carriers’ networks are able to access the NPSBN and fully communicate and coordinate with public safety entities using the NPSBN.^{10/} AT&T and FirstNet are the only commenting parties to disagree. But AT&T is merely attempting to leverage its FirstNet relationship to alarm potential customers into becoming AT&T subscribers. In fact, AT&T and FirstNet have exaggerated the purported interoperability limitations of other carriers in order to drive subscribers to AT&T’s network.^{11/} AT&T and FirstNet’s scare tactics particularly disadvantage potential customers of providers

^{8/} S. 2658, 116th Cong. § 4 (2019).

^{9/} See T-Mobile Reply Comments at 3-4.

^{10/} See, e.g., Comments of Minnesota Dep’t of Public Safety Emergency Communication Networks, PS Docket No. 19-254 (filed Sept. 26, 2019); Reply Comments of State of Illinois Public Safety Broadband Working Group, PS Docket No. 19-254 (filed Oct. 11, 2019); Letter from Vincent Martinez, Cabinet Secretary and Chief Information Officer, State of New Mexico, Dep’t of Information Technology, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 19-254 (filed Oct. 11, 2019); Comment of Jeff Spivey, Chief of Police, Irving, TX, PS Docket No. 19-254 (filed Oct. 2, 2019); Reply Comments of America’s Public Television Stations, PS Docket No. 19-254 (filed Oct. 11, 2019); Comments of Southern Communications Services, Inc. and C Spire, PS Docket No. 19-254 (filed Sept. 26, 2019); Comments of Mutualink, Inc., PS Docket No. 19-254 (filed Sept. 26, 2019); Reply Comments of Mutualink, Inc., PS Docket No. 19-254 (filed Oct. 11, 2019); Comments of New Jersey State Police, PS Docket No. 19-254 (filed Oct. 10, 2019); Reply Comments of The Digital Decision, PS Docket No. 19-254 (filed Oct. 11, 2019); Comments of Verizon, PS Docket No. 19-254 (filed Sept. 26, 2019); Reply Comments of Verizon, PS Docket No. 19-254 (filed Oct. 11, 2019).

^{11/} See, e.g., Andrew Seybold, *Public Safety Advocate: A Tale of Three States*, ALL THINGS FIRSTNET (Feb. 20, 2020), <https://allthingsfirstnet.com/public-safety-advocate-a-tale-of-three-states/>; Mark Rockwell, *AT&T Disputes Verizon’s FirstNet Interconnection Claims*, GCN (Jan. 24, 2018), <https://gcn.com/articles/2018/01/24/firstnet-att-dispute-verizon-interconnection.aspx>; Donny Jackson, *Michigan Becomes First State to ‘Opt-In’ to FirstNet After Issuing an RFP*, ALL THINGS FIRSTNET (Aug. 3, 2017), <https://urgentcomm.com/collections/michigan-becomes-first-state-to-opt-in-to-firstnet-after-issuing-an-rfp/?pg=1>.

like T-Mobile, which plans to provide innovative public safety offerings, like Connecting Heroes.^{12/}

Public safety entities must be afforded the opportunity to evaluate which network is best for them and subscribe to FirstNet through AT&T or choose another provider if they deem appropriate. If the Commission supports AT&T and FirstNet’s interpretation of “interoperability,” it could rob public safety entities of that choice and steer them to AT&T’s network under the mistaken assumption that they must do so to have access to FirstNet. Such an outcome would be particularly problematic in light of the recent report released by the Government Accountability Office (“GAO”) highlighting AT&T and FirstNet’s poor performance to date with the NPSBN.^{13/} According to the GAO, while AT&T and FirstNet are meeting or on track to meet their milestones, they have failed to provide a reliable master schedule for deployment, offered little to no information to stakeholders on AT&T’s progress and FirstNet’s oversight, and failed to collect meaningful information on end user satisfaction.^{14/} Public safety entities must be afforded choice when offering critical life-saving services and have a clear path to using other networks as well as accessing FirstNet when necessary. The fact that no state opted out of FirstNet does not mean that each state intends to use FirstNet for *all or any* of its public safety needs – it simply means that the state took the path of least resistance and that it wanted to preserve the option to use FirstNet if it chose to do so.

Technical arguments raised by AT&T and FirstNet do not support their position.^{15/} The network is based on 3GPP band class 14 for both commercial and public safety traffic.^{16/} But there is no reason that subscribers of other networks could not operate devices that contain both band class 14 and other spectrum. Accordingly, as TABFR’s Recommended Minimum Technical Requirements suggest, “FirstNet must *fully* embrace the technologies, standards and best practices used by commercial service providers to ensure interoperability on day 1 of network deployment and beyond.”^{17/} Like their claims regarding other carriers’ interoperability limitations, AT&T and FirstNet’s technical assertions are simply attempts to undermine their competitors’ public safety offerings and reduce choice for public safety entities.

^{12/} See T-Mobile, Introducing the Connecting Heroes Initiative, <https://www.t-mobile.com/business/public-safety> (last visited Mar. 17, 2020).

^{13/} See United States Government Accountability Office, PUBLIC-SAFETY BROADBAND NETWORK: NETWORK DEPLOYMENT IS PROGRESSING, BUT FIRSTNET COULD STRENGTHEN ITS OVERSIGHT (Jan. 2020), <https://www.gao.gov/assets/710/704058.pdf>.

^{14/} See *id.* at i, 15.

^{15/} See AT&T Comments at 4-10.

^{16/} See Technical Advisory Board for First Responder Interoperability, RECOMMENDED MINIMUM TECHNICAL REQUIREMENTS TO ENSURE NATIONWIDE INTEROPERABILITY FOR THE NATIONWIDE PUBLIC SAFETY BROADBAND NETWORK, §§ 2.1, 4.1.5.2, 4.1.6.1 (May 22, 2012), https://docs.fcc.gov/public/attachments/FCC-12-68A3_Rcd.pdf; see also *id.* § 4.5.3.

^{17/} *Id.* § 3.1.

The Commission has Ample Authority to Grant the BRETSA Petitions and Should do so Expediently.

Contrary to AT&T's assertion, the Commission has authority to grant the BRETSA Petitions,^{18/} Congress clearly envisioned a role for Commission oversight by making FirstNet an FCC licensee.^{19/} Like any other licensee, FirstNet is subject to Commission-imposed duties and obligations. Moreover, the creation of the TABFR under the purview of the FCC demonstrates that the Commission has a key role to play in oversight of FirstNet and ensuring the interoperability of the NPSBN.^{20/} Finally, the Spectrum Act specifically grants the Commission the authority to "adopt rules, if necessary in the public interest, to improve the ability of public safety networks to roam onto commercial networks and to gain priority access to commercial networks in an emergency"^{21/} and does not inhibit the Commission's ability to impose similar obligations on FirstNet to allow public safety users on other networks to roam onto the NPSBN when necessary. The actions requested in the BRETSA Petitions squarely fall under this authority, and the Commission should act accordingly.

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Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter has been submitted in the record of the above-referenced proceeding and copies have been sent to the members of the Commission's staff with whom we met. If there are any questions regarding the foregoing, please contact the undersigned.

Respectfully submitted,

/s/ Eric Hagerson

Eric Hagerson
Principal Manager, Federal Regulatory Affairs

cc: (each by e-mail)
David Furth
Erika Olsen
Michael Wilhelm
Brian Marenco
Roberto Mussenden
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^{18/} See AT&T Comments at 3 n.11.

^{19/} See Spectrum Act § 6201.

^{20/} See *id.* § 6203.

^{21/} See *id.* § 6211.